

No. 87-2106



IN THE
SUPREME COURT
OF THE UNITED STATES

October Term, 1988

RICHARD G. KASCHAK,
Petitioner,

vs.

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF KERN

Respondent,

PINE MOUNTAIN CLUB PROPERTY
OWNERS ASSOCIATION

Real Party
In Interest.

PETITIONER'S REPLY TO
BRIEF IN OPPOSITION

RICHARD G. KASCHAK
1928 Carmen Avenue
Hollywood, Calif.
90068
(213) 462-8803
Pro Se Petitioner

August 18, 1988

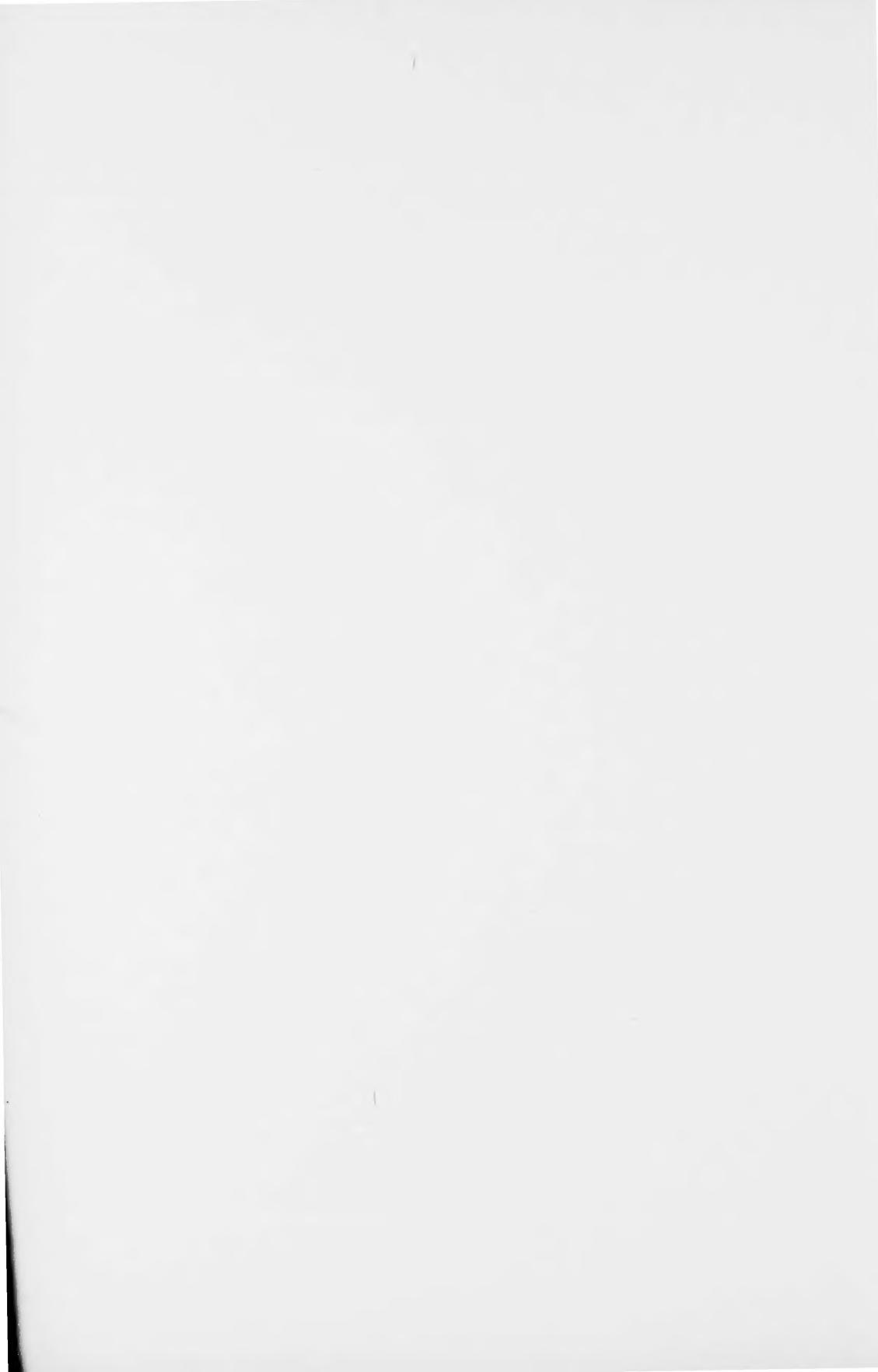


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RESPONSES & ARGUMENT PRESENTED

Respondent's brief in opposition
was received August 12, 1988, and it
circumvents all of the relevant and
material constitutional questions pre-
sented in petitioner's petition for
writ of certiorari.

Petitioner, Kaschak, hereby categorically replies to respondent's brief in opposition:

I.

RESPONDENT ADMITS THAT HIS EXHIBITS ARE NOT TRUTHFUL

Kaschak agrees that Respondent's Exhibit B, (1977 By-Laws) and Exhibit C, (1982 By-Laws) are not truthful, valid, and legal. Thus respondent's court is basing and giving judgment on fraudulent un-authenticated documents; thereby depriving Kaschak of his home and homestead property based on untruthful exhibits.

Thus such procedural, prejudicial conduct is violative of the basic constitutional rights of due process and equal protection as guaranteed by the U. S. Constitutional Amendments V, VI, and XIV.

II.

JUSTICE COURT JURISDICTION IS NOT IN CONFORMANCE WITH CALIF. CODE OF CIVIL PROCEDURE SEC. 86

Calif. Code of Civil Procedure

Sec. 86 (a) (1) further states:

....."except cases which involve the legality of any tax, impost, assessment.....if the legality of the tax is not contested by the defendant."

Kaschak does challenge the legality of this assessment because Pine Mt. Club has breached the 55% total membership requirement of the CC&R's dated 1971 (SEE EXHIBIT I); the original By-Laws dated 1971 (SEE EXHIBIT II), and Public Report (HUD) issued 1973 (SEE EXHIBIT III).

III.

CONTRACTUAL OBLIGATION SUIT
MUST BE BASED ON LAWFUL LEGAL
DOCUMENTS FOR PROPER RATIO
DECIDENDE.

Respondent's Exhibit "A", CC&R's dated 1971, is a lawful, legal contractual document. Such is affirmed by Kaschak in EXHIBIT I, excerpt Sec. 27 attached hereto in appendix.

However, the ORIGINAL by-laws are not respondent's Exhibit "B". The ORIGINAL by-laws are dated May 6, 1971, Kaschak EXHIBIT II, excerpt attached hereto in appendix.

Kaschak purchased land in 1973 as respondent affirms; the original by-laws of 1971, the CC&R's of 1971, and the Public Subdivision Report (HUD) of 1973 were all legally assumed and taken over by Kaschak.

Page 6 of Respondent's brief stating Exhibit "B" June 1977 by-laws as ORIGINAL

is misleading and fraudulent and was never assumed and/or approved by Kaschak or 55% total property owners (of which there are approx. 3,000+).

Respondent court ignored Federal law and *prima facie* evidence of Federal HUD, (Housing Urban Development) and California Public Report dated 1973. These are all contractual obligations upon which Kaschak bases lawsuit defense; must be entered into evidence for trial court and appellate court for proper ratio decidende.

IV.

\$50.00 ASSESSMENT IS MINOR ISSUE OF PLEADINGS; TESTIMONY OF OFFICE MGR. (MORSE) WAS REBUTTED BY TWO VALID PROPERTY OWNER WITNESSES.

Kaschak did in fact pay \$50.00 assessment pursuant to 1971 by-laws; such proper increases pursuant to proper fiduciary management. However, Pine

Mountain Club breached the CC&R's and the 1971 by-laws; denied Kaschak the benefits of the covenants (voting rights, use of facilities, proper fiduciary management) and demanded the burden of the covenants of dues assessments. Kaschak then ceased dues!

The court transcript clearly sets out that Pine Mt. Club witness, office manager Phyllis Morse was only employed in July 1979. How could such employee know about the original 1971 by-laws, and a supposed 1977 unlawful amendment change and/or revision? How could a supposed impartial justice court consider Phyllis Morse testimony as valid to authenticate valid 1971-1977 by-law amendments? Procedural error!

Kaschak's rebuttal witnesses were property owners of record (Charmaine Sullivan and Marvin Steele) who testi-

fied in open court that they had never voted and/or been notified concerning amendments to the 1971 by-laws; nor had they received any other by-laws than those 1971 by-laws which were notarized and duly recorded thereto.

Pine Mt. Club could produce no property owner witnesses (out of a potential 3,000+) who could vouch that a 55% total property owner membership voted for the 1977 and/or 1982 by-laws.

V.

**ARCHAIC STANDARDS OF REVIEW
ARE SUGGESTED BY RESPONDENT;
ONLY NEW ISSUE ON APPEAL BY
KASCHAK WAS JUSTICE COURT
NON-COMPLIANCE OF LAWFUL,
LEGAL COURT SUBPOENA AND
VIOLETION OF DUE PROCESS**

Respondent's 1955 and 1957 ancient law citations of People v Albers and Roth v United States are criminal

misdemeanor cases of lewd conduct and obscenity, and cannot be compared to the deprivation of a United States citizen and veteran's homesteaded real property in violation of constitutional due process and equal protection as guaranteed by the United States Constitution and Amendments V, VI, & XIV.

Petitioner cites Schweiger v Superior Court (1970) 3 Cal 3d 507, 90 Cal Rptr 729 which held that denial of a fair hearing on the merits of the case constituted an abuse of discretion.

In this instance case, the trial justice court completely ignored the abuse and non-compliance of a lawful, legal court subpoena of a witness that was being ordered by the petitioner as an important and essential hostile witness to prove and support petitioner's complaint and case. The trial court

judge and Pine Mountain Club female counsel went into "closed door" conference; ignoring and not inviting Kaschak, as petitioner in pro per to participate in the subpoena non-compliance ruling by the court. Was this a fair hearing for a petitioner and U.S. citizen in pro per who could not afford the services of a paid atty?

In *Palko v Connecticut*, 302 U.S. 319, it was held:

"The hearing moreover must be a real one, not a sham or a pretense"

Petitioner, Kaschak, further cites *Ticor Title Ins. Co. v Rancho Santa Fe* (1986) 223 Cal Rptr 175, a more recent Cal App Fourth Dist case which held that the board of directors of a property owners association lacked authority to modify the covenants and by-laws without the written consent of

not less than two-thirds of all said property owners. The board acting alone was denigrating the voting rights of the property owners.

Thus a proper standard of review to be employed should have been the above cited more recent cases applicable to Kaschak's circumstances; not archaic law of obscenity cases.

Furthermore, respondent's conclusion on page 16 of brief:

...."Kaschak apparently contended the dues were an "assessment" in the sense of being a tax or levy....."

Such is a blatant mis-statement of the facts and is nowhere to be found in reporter's transcript. Respondent is attempting to mis-characterize the basic issues of procedural due process and uniformity decision California stare decisis law precedence as discussed supra in Ticor Title Ins. Co.

VI.

PETITIONER'S FINAL
ARGUMENT

Pine Mt. Club Association publication (The Condor) is boasting foreclosure upon 45 property owners lots based upon the above discussed illegal, fraudulent by-laws. Furthermore this publication is stating that the case of Kaschak vs Pine Mt. Club lawsuit was decided in favor of Pine Mt. Club in the State Supreme Court of Calif. when in fact petitioner's petition for review was denied and never heard by the states highest court.

(SEE ATTACHED EXHIBIT IV, page 4a)

Pine Mt. Club is also attempting to invalidate Petitioner (Kaschak's) valid homestead declaration so that the respondent and its manipulating counsel can profit from the loss of

such U.S. Army veteran's lawful home-stesteaded home.

There are approximately 3,000+ property owners at Pine Mt. Club who could face such possible threat of foreclosure; invalidation of citizen's homestead declaration unless the Supreme Court of the United States compels review as to the validity of the 1977 by-laws; the 55% total membership vote is confirmed. Local justice courts are prejudiced in favor of Pine Mt. Club socializing & friends.

CONCLUSION

GOD willing, and petitioner requesting that the Supreme Court Of The United States will grant pro se petitioner's petition for a writ of certiorari based on the following constitutional due process & equal rights violations of:

1. Ignoring Federal statutory law by refusing to admit into evidence the 1973 Public Report (HUD).

2. Foreclosing on a veteran's homestead property without admitting into evidence the assumed original 1971 by-laws, and proving that there was a valid, legal 1977 by-law change approved by 55% total membership requirement of CC&R's, By-Laws, and Public Report.

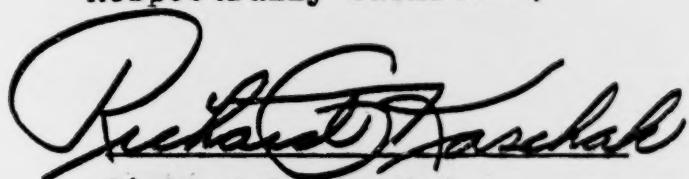
3. Applying appellate district stare decisis law precedence.

4. Misconduct and procedural error pertaining to legal court subpoena and compulsory compliance & process for obtaining witnesses.

5. Protecting the dignity of pro se litigants from court abuse and procedural and prejudicial error.

The time is "ripe" for pro se
litigation justice.

Respectfully submitted,



Richard G. Kaschak
Petitioner In Pro Se
1928 Carmen Avenue
Hollywood, Calif. 90068
(213) 462-8803

DATED: August 18, 1988

PROOF OF SERVICE

STATE OF CALIFORNIA)
)
COUNTY OF LOS ANGELES)

I, DOROTHY KOPPELMAN, declare:

I am a citizen of the United States and a resident of the County aforesaid; I am over the age of 18 years and not a party to the within entitled action. My address is 1928 Carmen Avenue, Apt # 7, Hollywood, Calif. 90068.

On August 19, 1988, I served the within PETITIONER'S REPLY TO BRIEF IN OPPOSITION on the interested parties in said action by placing a true copy thereof in a sealed envelope with postage thereon fully prepaid in the U.S. mail at Hollywood, California, addressed as follows:

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF KERN (A-384)
ATT: Robert D. Woods, Atty
1415 Truxtun Avenue
Bakersfield, Calif. 93301

TAFT-MARICOPA JUSTICE COURT (CJ 193)
311 Lincoln Street
P.O. Box RR
Taft, Calif. 93266

CALIF. COURT OF APPEAL
FIFTH APPELLATE DISTRICT (F00938)
Rm 5002, State Bldg.
2550 Mariposa Street
Fresno, Calif. 93721

CALIF. SUPREME COURT (S 004205)
100 Library & Cts Bldg
Sacramento, Calif. 95814

MONTELEONE & MC CRORY
ATT: Debra Tilson Lambeck, Atty
10 Universal City Plaza, Ste 2500
Universal City, Calif. 91608-7806

I declare the foregoing to be
true and correct under penalty of
perjury.

EXECUTED on August 19, 1988, at
Hollywood, California.

Dorothy Koppelman
Dorothy Koppelman

APPENDIX

DECLARATION COVENANTS, CONDITIONS,
AND RESTRICTIONS

TRACT NO. 3402 PINE MOUNTAIN CLUB

THIS DECLARATION made this 28th day of April, 1971 by PINE MOUNTAIN CLUB, INC., a Calif. corporation, hereinafter called "declarant".

.....

.....

27. Except as otherwise provided herein, the provisions of these restrictions may be amended by an instrument in writing signed and acknowledged by record owners having fifty-five (55) per cent of the total lot ownership subject hereunder....

.....

*** NOTE: PLAINTIFF's EXHIBIT 1
Justice Court Case CJ 193

also: EXHIBIT "A"
RESPONDENT'S BRIEF IN
OPPOSITION
Supreme Ct. Case 87-2106

EXHIBIT I

**

BY-LAWS OF
PINE MOUNTAIN CLUB PROPERTY OWNERS ASSOC.

ARTICLE IX

Section 2. These By-Laws may only be amended or repealed, and new By-Laws adopted by the members having at least fifty-five percent (55%) of the total votes of the membership approving such amendment or repeal.

Certificate of Secretary

..... the above and foregoing By-Laws were adopted by the Board Of Directors of said Association on this 6th day of May, 1971, and that they now constitute said By-Laws.

Secretary

**NOTE: DEFENDANT'S EXHIBIT
marked "L" in Justice Court
Case CJ 193

EXHIBIT II

**
DEPARTMENT OF REAL ESTATE OF THE
STATE OF CALIFORNIA

Robert W. Karp, Real Estate Commissioner
PINE MOUNTAIN CLUB INC.
TRACT NO. 3567

FINAL SUBDIVISION PUBLIC REPORT
ISSUED January 18, 1973
EXPIRES January 17, 1978

MANAGEMENT AND OPERATION

.....The provisions of any documents relating to management and operation may not be amended without the vote or written approval of at least 55% of the total votes.

**NOTE: DEFENDANT'S EXHIBIT
marked "V" in Justice Court
Case CJ 193

PINE MOUNTAIN CLUB

The CONDOR

Vol 11 No 1 Aug-Sept. 1988

Chief Operating Officer's Report

.....

...At this time we have 53 current delinquent owners, 45 lots in foreclosure, 10 may not be collectable due to bankruptcy.

.....The one remaining case of Kaschak vs PMCPOA was decided in favor of PMCPOA in the State Supreme Court, and we are now trying to collect the substantial judgement that was awarded POA.

.....

by: Mel McColloch, Chief Operating Officer.

EXHIBIT IV